

REMARKS

Claim 1, as well as claims 2 – 7, and 10 dependent thereon, and claim 11, as well as claims 12 – 15, and 18 dependent thereon, have been amended to bring out that the ready to eat vegetable yogurt and method of manufacturing same is made from cooled, pureed vegetables comprising a combination of cooked and frozen vegetables. In addition, claims 1 and 11, as well as claims 2 – 7, 10 and claims 12 – 15, and 18 dependent thereon, respectively, have been amended to further require that at least one frozen vegetable is added to the cooked vegetables when they are being cooled to form a cooled vegetable mixture that is pureed to form a smooth textured mixture of cooled pureed vegetables appointed to be homogeneously blended with the plain yogurt. That is to say, independent claims 1 and 11, formerly directed to “*cooked pureed vegetables*”, have been amended to require that the vegetables are “*cooked*”, and further, that the yogurt comprises “*cooled pureed vegetables*”. Claims 2, 3 and 10, which are dependent on claim 1, and claims 14, 15 and 18, which are dependent on claim 11, have been amended for the sake of consistency. The amendments to claims 1 and 11, as well as claims 2 – 7, and 10 and 12 – 15, and 18 dependent thereon, respectively, are clearly supported by the original specification, particularly at: page 11, lines 21 – 23; page 12, lines 1 – 5; page 13, lines 18 – 23; page 15, lines 14 – 19; and page 18, lines 2 – 5.

The ready to eat vegetable yogurt required by applicant’s present claims comprises cooked vegetables blended with at least one frozen vegetable when the cooked vegetables are being cooled to yield a cooled vegetable mixture. Applicant’s present claims further require that the cooled vegetable mixture is pureed to form a smooth textured mixture of cooled pureed vegetables. Cooling of the vegetables before pureeing, as required by applicant’s present claims,

mitigates degradation of the vegetable's nutritional properties while mitigating reaction between the vegetables and yogurt so that the vegetable's properties and taste are not compromised. Applicant's present claims 1 – 7, 10, 11 – 15 and 18 require that the cooled pureed vegetables range from 40 to 60 percent by weight. The weight percent required by applicant's present claims provides a vegetable yogurt having a significant weight percentage of vegetables without the presentation of preservatives or other non-natural additives, thereby yielding a highly nutritional food packed with essential vitamins, minerals, and fibers inherent in the vegetable utilized.

Summary of Examiner's Rejection:

The Examiner has rejected claims 1 – 7, 10 – 15 and 18 under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent No. 61231958 to Hara, Japanese Patent No. 55007013 to Kazutada et al., Japanese Patent No. 3112454 to Masahiro et al., and Great Britain Patent No. 2294625 to Oliver.

In keeping with the Examiner's previous rejection, the Examiner has stated that Hara, Kazutada et al., Masahiro et al., and Oliver disclose a yogurt comprising vegetable. (Hara, abstract; Kazutada et al., abstract; Masahiro et al., abstract; and Oliver, entire document, especially pages 1 and 3). The Examiner has further stated that the Applicant's claims differ as to the recitation of specific cultures and percents. As to specific yogurt cultures, the Examiner has stated that it is notoriously well-known in the art and used for their art-recognized purpose. As to the percents of vegetable to yogurt claimed by Applicant, the Examiner has stated that, in the absence of showing to the contrary, the amounts claimed are seen to be no more than a matter

of choice, dictated by preference, and well-within the skill of the art.

The Examiner has stated that it would have been obvious to a person of ordinary skill in the art, at the time the invention was made, to use conventional yogurt cultures and the claimed [vegetable weight] percents in that of Hara, Kazutada et al., Masahiro et al., or Oliver because the use of conventional cultures and preferred [vegetable] amounts is well-within the skill of the art. The Examiner further concluded that once the art has recognized the addition of vegetable products to yogurt, the use and manipulation of types of vegetables and percents employed is merely a matter of choice and well-within the skill of the art. Moreover, the Examiner has noted that once removed from heat, the cooling process of a vegetable is inherent, and that the immediate cooling of products to prevent overcooking is conventional.

Examiner's Consideration of Applicant's Previously Filed Arguments:

The Examiner has stated that Applicant's arguments contained in the Response filed November 6, 2006 have been fully considered but not found persuasive. Particularly, the Examiner has pointed to Applicant's argument that the cooling of vegetables before pureeing is not taught by the combined references and has concluded that such cooling requirement does not distinguish Applicant's invention over the references cited because once removed from heat, the cooling process of a vegetable is inherent. Further note was made by the Examiner that the immediate cooling of products to prevent overcooking is conventional, and that Application does not define the cooling step nor define a cooled temperature. Moreover, the Examiner has stated that the prior art clearly teaches the addition of vegetables to yogurt, and that in the absence of a showing to the contrary, Applicant is using known components to obtain no more than expected

results.

In addition, the Examiner has stated that in Applicant argued against references individually, and that nonobviousness cannot be shown by attacking references individually where the rejections are based on combinations of references.

Applicant's Response:

Applicant agrees with the Examiner that nonobviousness cannot be shown by attacking references individually where the rejections are based on combinations of references; however, Applicant respectfully submits that Applicant's arguments were directed to the combination of the references. Applicant discussed deficiencies in each of the references to show that the references, taken either alone or in combination, do not teach or suggest all the claim limitations, and therefore any combination of same would not teach or suggest all the claim limitations of Applicant's invention. (MPEP 2142, "Establishing a *Prima Facie* Case of Obviousness", first paragraph). Additionally, Applicant discussed each of the references to support Applicant's argument that each reference teaches the addition of an agent to a food product having vegetables and yogurt in order to provide the function of stability to the food product, and that Applicant's claims omit the use of a stabilizing agent while at the same time retaining the omitted element's (stabilizing agent's) function. (MPEP 2144.04 II B, "*Omission of an Element with Retention of the Element's Function Is an Indicia of Unobviousness*").

Specifically, Hara discloses the addition of fermented bean past (MISO) and / or fermented milk product, such as yogurt (NYUFU), to a food product (such as vegetable), in a ratio of ~3pts. MISO / NYUFU to 100pts. food product so that the MISO/NYUFU acts as an

agent to retard the freeze-denaturation of the food product. Kazutada et al. discloses a process wherein finely cut or ground vegetables, extracts, juices, *heated or cooked vegetables* are added to yogurt *before* fermentation and a gelatinizing agent is added, wherein the addition before fermentation and the gelatinizing agent are added in order to provide stabilization to the vegetables via soften fermentation odor and improved flavor. Masahiro et al. discloses a process for formulating a vegetable food product comprising the mixing of vegetables, yogurt and a gelling agent appointed to suppress the grassy smell of vegetables and improve the taste and flavor. Lastly, Oliver discloses a vegetable type yogurt wherein rosaceous fruit, 9 to 31 weight percent, is added as a stabilizing agent acting as a preservative for the yogurt food product.

Under MPEP 2144.04 II B, the omission of an element and retention of its function is indicia of unobviousness. In re Edge, 359 F.2d 896, 149 USPQ 556 (CCPA 1966). In Edge an applicant's claims were directed to a printed sheet having a thin layer of erasable metal bonded directly to a sheet wherein the thin layer obscured the original print until removal by erasing. The prior art in Edge disclosed a similar printed sheet further comprising an intermediate transparent and erasure-proof protecting layer which prevented erasure of the printing when the top layer was erased. The Court in Edge held that although the transparent layer taught by the prior art was eliminated, the function of the transparent layer was retained by the applicant, and therefore the applicant's claims were found unobvious. As in Edge, Applicant's claims 1 – 18 provide a vegetable yogurt that omits an element of the prior art references, while at the same time retaining the element's function, and therefore Applicant respectfully submits that Applicant's claims 1 – 18 be deemed unobvious by the Examiner. That is to say, Applicant's claims 1 – 18 require a vegetable yogurt having 40 to 60 weight percent of vegetables wherein

the vegetables are added to the yogurt in a cold pureed state so that the function of stability is achieved while the stabilizing agents taught by Hara, Kazutada et al., Masahiro et al., and Oliver are omitted. Thus Applicant's claimed invention provides for the omission of the stabilizing agent, while at the same time provides for the retention of the stabilizing agent's function which is achieved by adding the vegetables in a cold pureed state.

As amended, Applicant's claim 1, as well as claims 2 – 7, and 10 dependent thereon, and claim 11, as well as claims 12 – 15, and 18 dependent thereon, disclose a ready to eat vegetable yogurt comprising cooked cooled vegetables mixed and pureed with at least one frozen vegetable to form a cooled pureed vegetable mixture that is blended with plain yogurt and natural additives to enhance flavor and taste. Addition of at least one frozen vegetable to the cooked vegetable during cooling thereof, as required by Applicant's amended claims, facilitates rapid cooling of the vegetables before pureeing, so that the vegetables' nutritional properties and taste are not compromised due to overcooking and chemical activity. That is to say, cooling of the vegetables prior to the pureeing step and addition of the vegetables to the yogurt, as called for by applicant's claims, results in minimal reaction between the vegetables and yogurt. Advantageously, the freshness, taste, and nutritional properties of the cooked vegetables are preserved, and fermentation of the cooked vegetables, which results at warm temperatures due to the active cultures found in the yogurt, is prevented. Applicant's claims 1 – 7, 10, 11 – 15 and 18 further require that the cooked pureed vegetables range from 40 to 60 percent by weight. The weight percent required by applicant's present claims provides a vegetable yogurt having a significant weight percentage of vegetables without the presentation of preservatives or other non-natural additives. The resulting product constitutes a highly nutritional food packed with

essential vitamins, minerals, and fibers inherent in the vegetable utilized.

The addition of a sizeable weight percentage of pureed vegetables, as called for by applicant's present claims 1 – 18, is carried out under cold conditions. The cooked vegetables are rapidly cooled, during which time at least one frozen vegetable is added thereto. The combined ingredients are then mixed to form a cold pureed vegetable that is blended with yogurt, so that degradation of the vegetable's nutrients is minimized. The addition of cold pureed vegetables to a yogurt is not taught or suggested by any prior art worker, including Hara, Kazutada et al., Masahiro et al., or Oliver. Moreover, the cited references do not disclose or suggest combining cooked vegetables with at least one frozen vegetable during the cooling step, as required by applicant's claims. Further, the addition of cold pureed vegetables in amounts ranging between 40 to 60 weight percent is not disclosed or suggested by any prior art worker, including Hara, Kazutada et al., Masahiro et al., or Oliver.

Instead, the prior art teachings of Hara, Kazutada et al., Masahiro et al., or Oliver suggest that preservatives and the like (rosaceous fruit; jellies; etc.) must be added to vegetable yogurt preparations in order to stabilize the flavoring. None of the prior art references, including Hara, Kazutada et al., Masahiro et al., or Oliver teach a ready to eat vegetable yogurt that utilizes a combination of cooked and frozen vegetables and a 40 to 60 weight percent of cold vegetables without the addition of preservatives and the like. On the other hand, the amount of vegetable required by Applicant's claims 1-18 and the requirement that the vegetables be added in a cold pureed state constitute elements that function to yield a highly nutritional food product. When compared with any product disclosed or suggested by the art applied, the food product called for by applicant's claims is nutritionally more stable and viable while, at the same time, avoiding the

need for addition of stabilizing agents.

Accordingly, reconsideration of the rejection of claims 1 – 7, 10 – 15 and 18 under 35 USC §103(a) as being unpatentable over Hara, Kazutada et al., Masahiro et al., and/or Oliver is respectfully requested.

CONCLUSION

In view of the amendments to the claims and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the rejection of claims 1 – 7, 10 – 15 and 18 and their allowance are earnestly solicited.

Respectfully submitted,
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